



CONTRACT FOR SERVICE PROVIDER

TITLE:
A CONTRACT BETWEEN

THE CITY OF NASHUA, 229 MAIN STREET, NASHUA, NH 03061-2019

AND

NAME AND TITLE OF SERVICE PROVIDER

ADDRESS OF SERVICE PROVIDER

WHEREAS, the City of Nashua, a political subdivision of the State of New Hampshire, from time to time requires the services of a Service Provider; and

WHEREAS, it is deemed that the services of a Service Provider herein specified are both necessary and desirable and in the best interests of the City of Nashua; and

WHEREAS, Service Provider represents they are duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

NOW, THEREFORE, in consideration of the agreements herein made, the parties mutually agree as follows:

1. DOCUMENTS INCORPORATED. The Service Provider shall complete the work described in the Contract Documents. The following are by reference incorporated herein and are made part of this contract:

1. This Agreement signed by the City of Nashua and Service Provider, including the General Terms and Conditions.
2. Bid Form or Proposal
3. Insurance Certificate
4. Written change orders or orders for minor changes in the Work issued after execution of this Agreement; and
5. Fully Executed City of Nashua Purchase Order

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, proposals, representations or agreements, either written or oral. Any other documents which are not listed in this Article are not part of the Contract.

2. WORK TO BE PERFORMED. Except as otherwise provided in this contract, Service Provider shall furnish all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform the work as described in and in accordance with the specifications in the City of Nashua's request for proposals and the terms and conditions of the contract.

3. PERIOD OF PERFORMANCE. Service Provider shall perform and complete all work within the time periods set forth. The time periods may only be altered by the parties by a written agreement to extend the period of performance or by termination in accordance with the terms

of the contract. Service Provider shall begin performance upon receipt of a Notice to Proceed and a valid purchase order from the City of Nashua.

The term of the contract will be for three (3) years with the first year commencing on or about **July 1, 2015 and terminating on June 30, 2018.** Each year is subject to annual budget appropriations and at the City of Nashua's discretion.

4. COMPENSATION. Service Provider agrees to perform the work for a total cost not to exceed

Dollars (\$ _____)

The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

Unless Service Provider has received a written exemption from the City of Nashua, Service Provider shall submit an itemized Application for Payment for operations completed in accordance with the values stated in the Agreement. Such applications shall be supported by such data substantiating the Service Provider's right to payment as the City of Nashua may reasonably require. Service Provider shall submit monthly requests for payment for services performed under this agreement directly to:

**City of Nashua
Accounts Payable
PO Box 2019
Nashua, NH 03061-2019
Atten:**

To facilitate the proper and timely payment of applications, the City of Nashua requires that all invoices contain a valid **PURCHASE ORDER NUMBER.**

Applications for Payment shall be submitted no later than fifteen (15) days after the end of each month. The City of Nashua will pay for work satisfactorily completed by Service Provider within thirty (30) days from the time of **final approval** by the City of Nashua of the submitted Application for Payment

5. EFFECTIVE DATE OF CONTRACT. This contract shall not become effective until and unless approved by the City of Nashua.

6. NOTICES. All notices, requests, or approvals required or permitted to be given under this contract shall be in writing, shall be sent by hand delivery, overnight carrier, or by United States mail, postage prepaid, and registered or certified, and shall be addressed to:

CITY OF NASHUA REPRESENTATIVE:

SERVICE PROVIDER REPRESENTATIVE:

Any notice required or permitted under this contract, if sent by United States mail, shall be deemed to be given to and received by the addressee thereof on the third business day after being deposited in the mail. The City of Nashua or Service Provider may change the address or representative by giving written notice to the other party.

General Terms and Conditions

1. DEFINITIONS. Unless otherwise required by the context, "Service Provider" includes any of the Service Provider's consultants, subconsultants, contractors, and subcontractors

2. SERVICE PROVIDER STATUS AND PROVISION OF WORKERS' COMPENSATION COVERAGE. The parties agree that Service Provider shall have the status of and shall perform all work under this contract as an independent contractor, maintaining control over all its consultants, subconsultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the City of Nashua and Service Provider, and nothing in this contract shall create any contractual relationship between the City of Nashua and Service Provider's consultants, subconsultants, contractors, or subcontractors. The parties also agree that Service Provider is not a City of Nashua employee and that there shall be no:

1. Withholding of income taxes by the City of Nashua;
2. Industrial insurance coverage provided by the City of Nashua;
3. Participation in group insurance plans which may be available to employees of the City of Nashua;
4. Participation or contributions by either the Service Provider or the City of Nashua to the public employee's retirement system;
5. Accumulation of vacation leave or sick leave provided by the City of Nashua;
6. Unemployment compensation coverage provided by the City of Nashua.

Service Provider agrees, if not exempt, to maintain required workers' compensation coverage throughout the entire term of the contract. If Service Provider does not maintain coverage throughout the entire term of the contract, Service Provider agrees that the City of Nashua may, at any time the coverage is not maintained by Service Provider, order the Service Provider to stop work, suspend the contract, or terminate the contract. For each six-month period this contract is in effect, Service Provider agrees, prior to the expiration of the six-month period, to provide another written request to its insurer for the provision of a certificate and notice of lapse in or nonpayment of coverage. If Service Provider does not make the request or does not provide the certificate before the expiration of the six-month period, Service Provider agrees that the City of Nashua may order the Service Provider to stop work, suspend the contract, or terminate the contract.

3. STANDARD OF CARE. Service Provider shall be responsible for the quality, accuracy, timely completion, and coordination of all work performed under this contract. Service Provider warrants that all work shall be performed with the degree of skill, care, diligence, and sound practices and judgment that are normally exercised by recognized firms with respect to services of a similar nature. It shall be the duty of Service Provider to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the City of Nashua may have, Service Provider shall, at its own expense and without additional compensation, re-perform work to correct or revise any deficiencies, omissions, or errors in the work or the product of the work or which result from Service Provider's failure to perform in accordance with this standard of care. Any approval by the City of Nashua of any services furnished or used by Service Provider shall not in any way relieve Service Provider of the responsibility for professional and technical accuracy and adequacy of its work. City of Nashua review, approval, or acceptance of, or payment for any of Service Provider's work under this contract shall not operate as a waiver of any of the City of Nashua's rights or causes of action under this contract, and Service Provider shall be and remain liable in accordance with the terms of the contract and applicable law.

Service Provider shall furnish competent and skilled personnel to perform the work under this contract.

4. CHANGES TO SCOPE OF WORK. The City of Nashua may, at any time, by written order, make changes to the general scope, character, or cost of this contract and in the services or work to be performed, either increasing or decreasing the scope, character, or cost of Service Provider's performance under the contract. Service Provider shall provide to the City of Nashua within 10 calendar days, a written proposal for accomplishing the change. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City of Nashua to be able to adequately analyze the proposal. The City of Nashua will then determine in writing if Service Provider should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Service Provider's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Service Provider for adjustment under this clause shall be asserted in writing within 30 days of the date the City notified Service Provider of the change.

5. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, OR DISCREPANCIES. **PROFESSIONAL** Service Provider warrants that it has examined all contract documents, has brought all conflicts, errors, discrepancies, and ambiguities to the attention of the City of Nashua in writing, and has concluded that the City of Nashua's resolution of each matter is satisfactory to Service Provider. All future questions Service Provider may have concerning interpretation or clarification of this contract shall be submitted in writing to the City of Nashua within 10 calendar days of their arising. The writing shall state clearly and in full detail the basis for Service Provider's question or position.

The City of Nashua representative shall render a decision within 15 calendar days. The City of Nashua's decision on the matter is final. Any work affected by a conflict, error, omission, or discrepancy which has been performed by Service Provider prior to having received the City of Nashua's resolution shall be at Service Provider's risk and expense. At all times, Service Provider shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination of the City of Nashua. Service Provider is responsible for requesting clarification or interpretation and is solely liable for any cost or expense arising from its failure to do so.

6. TERMINATION OF CONTRACT.

A. TERMINATION, ABANDONMENT, OR SUSPENSION AT WILL. The City of Nashua, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the City of Nashua chooses to terminate, abandon, or suspend all or part of the project, it shall provide Service Provider 10 day's written notice of its intent to do so.

If all or part of the project is suspended for more than 90 days, the suspension shall be treated as a termination at will of all or part of the project and contract.

Upon receipt of notice of termination, abandonment, or suspension at will, Service Provider shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. provide the City of Nashua with a list of all unperformed services
3. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
4. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of Nashua of all orders or subcontracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the City of Nashua any orders or subcontracts specified in the notice, and revoke agreements specified in the notice.

5. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the City of Nashua to resume performance.

In the event of a termination, abandonment, or suspension at will, Service Provider shall receive all amounts due and not previously paid to Service Provider for work satisfactorily completed in accordance with the contract prior to the date of the notice and compensation for work thereafter completed as specified in the notice. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work.

B. TERMINATION FOR CAUSE. This agreement may be terminated by the City of Nashua on 10 calendar day's written notice to Service Provider in the event of a failure by Service Provider to adhere to any or all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City of Nashua, to complete work in a timely and professional manner. Service Provider shall be given an opportunity for consultation with the City of Nashua prior to the effective date of the termination. Service Provider may terminate the contract on 10 calendar days written notice if, through no fault of Service Provider, the City of Nashua fails to pay Service Provider for 30 days after the date of approval of any Application for Payment.

In the event of a termination for cause, Service Provider shall receive all amounts due and not previously paid to Service Provider for work satisfactorily completed in accordance with the contract prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the City of Nashua by reasons of Service Provider's failure. Service Provider shall not be relieved of liability to the City of Nashua for damages sustained from the failure, and the City of Nashua may withhold any payment to the Service Provider until such time as the exact amount of damages due to the City of Nashua is determined. All claims for payment by the Service Provider must be submitted to the City of Nashua within 30 days of the effective date of the notice of termination.

If after termination for the failure of Service Provider to adhere to any of the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City of Nashua, to complete work in a timely and professional manner, it is determined that Service Provider had not so failed, the termination shall be deemed to have been a termination at will. In that event, the City of Nashua shall make an equitable adjustment in the compensation paid to Service Provider. The adjustment shall include a reasonable profit for services or other work performed up to the effective date of termination less all previous payments.

C. GENERAL PROVISIONS FOR TERMINATION. Upon termination of the contract, the City of Nashua may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Service Provider shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Service Provider assigned to the performance of the contract.

Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Service Provider's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Service Provider's control.

7. DISPUTE RESOLUTION. The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through

good faith efforts and negotiation between the City of Nashua Representative and a Service Provider representative. At all times, Service Provider shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City of Nashua. If the parties are unable to resolve their dispute as described above, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.

8. NO DAMAGES FOR DELAY. Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to Service Provider for damages because of hindrances or delays in the progress of the work from any cause, and Service Provider agrees to accept in full satisfaction of such hindrances and delays any extension of time that the City of Nashua may provide.

9. INSURANCE. Service Provider shall carry and maintain in effect during the performance of services under this contract:

- General liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate;
- Motor Vehicle Liability: \$1,000,000 Combined Single Limit;
***Coverage must include all owned, non-owned and hired vehicles.**
- Workers' Compensation Coverage in compliance with the State of NH Statutes, \$100,000/\$500,000/\$100,000.

*(Sole Proprietors **not** subject to Workers' Compensation requirements)*

Service Provider shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers. None of the requirements as to types and limits to be maintained by Service Provider are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Service Provider under the contract. The City of Nashua shall not maintain any insurance on behalf of Service Provider. Subcontractors are subject to the same insurance requirements as the Service Provider and it shall be the Service Provider's responsibility to ensure compliance of this requirement. Service Provider will provide the City of Nashua with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within ten (10) calendar days after the City of Nashua issues the notice of award. The City of Nashua requires thirty (30) days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. Certificates must name the **City of Nashua as an additional insured, except for Professional liability insurance.** Service Provider is responsible for filing updated Certificates of Insurance with the City of Nashua's Risk Management Department during the life of the contract. The certificate should be mailed to:

Risk Management
City of Nashua
229 Main Street
Nashua, NH 03060

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, Service Provider must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.

- The specified insurance requirements do not relieve Service Provider of its responsibilities or limit the amount of its liability to the City of Nashua or other persons, and Service Provider is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by the City of Nashua shall be called upon to contribute to a loss.
- Service Provider is responsible for and required to remedy all damage or loss to any property, including property of the City of Nashua, caused in whole or part by Service Provider or anyone employed, directed, or supervised by Service Provider.

10. INDEMNIFICATION. Regardless of the coverage provided by any insurance, Service Provider agrees to indemnify and shall defend and hold harmless the City of Nashua, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorneys' fees, costs and expenses of any kind or nature to the extent caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of Service Provider or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Service Provider's indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

11. FISCAL CONTINGENCY. All payments under this contract are contingent upon the availability to the City of Nashua of the necessary funds. This contract shall terminate and the City of Nashua's obligations under it shall be extinguished at the end of any fiscal year in which the City of Nashua fails to appropriate monies for the ensuing fiscal year sufficient for the performance of this contract.

Nothing in this contract shall be construed to provide Service Provider with a right of payment over any other entity. Any funds obligated by the City of Nashua under this contract that are not paid to Service Provider shall automatically revert to the City of Nashua's discretionary control upon the completion, termination, or cancellation of the agreement. The City of Nashua shall not have any obligation to re-award or to provide, in any manner, the unexpended funds to Service Provider. Service Provider shall have no claim of any sort to the unexpended funds.

12. COMPLIANCE WITH APPLICABLE LAWS. Service Provider, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all immigration and naturalization laws, and the Americans With Disabilities Act. Service Provider shall, throughout the period services are to be performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the City of Nashua in writing of any changes to the same relating to or affecting this contract, and shall submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.

13. NONDISCRIMINATION. In connection with the performance of work under this contract, Service Provider agrees not to discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age, or sexual orientation. This agreement includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

14. SERVICE PROVIDER ENDORSEMENT. Service Provider shall sign, seal, and/or stamp as appropriate any necessary documents as required under the laws of the State of New Hampshire.

15. ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING. Service Provider shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City of Nashua. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City of Nashua is void. Any consent of the City of Nashua to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.

16. CITY OF NASHUA INSPECTION OF CONTRACT MATERIALS. The books, records, documents and accounting procedures and practices of Service Provider related to this contract shall be subject to inspection, examination and audit by the City of Nashua.

17. TAXES. Service Provider shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Service Provider hereby indemnifies and holds harmless the City of Nashua from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

18. NON-WAIVER OF TERMS AND CONDITIONS. None of the terms and conditions of this contract shall be considered waived by the City of Nashua. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City of Nashua in a written waiver.

19. RIGHTS AND REMEDIES. The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.

20. PROHIBITED INTERESTS. Service Provider shall not allow any officer or employee of the City of Nashua to have any indirect or direct interest in this contract or the proceeds of this contract. Service Provider warrants that no officer or employee of the City of Nashua has any direct or indirect interest, whether contractual, noncontractual, financial or otherwise, in this contract or in the business of Service Provider. If any such interest comes to the attention of Service Provider at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City of Nashua.

Service Provider warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Service Provider to any officer or employee of the City of Nashua with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this contract.

21. THIRD PARTY INTERESTS AND LIABILITIES. The City of Nashua and Service Provider, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party and this agreement is entered into for the exclusive benefit of the City of Nashua and Service Provider.

22. SURVIVAL OF RIGHTS AND OBLIGATIONS. The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.

23. SEVERABILITY. In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.

24. MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT. This contract constitutes the entire contract between the City of Nashua and Service Provider. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.

25. CHOICE OF LAW AND VENUE. This contract shall be governed exclusively by the laws of the State of New Hampshire and any litigation shall be brought in a court located in the State of New Hampshire.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

City of Nashua, NH (signature)

(signature)

Donnalee Lozeau, Mayor
(Printed Name and Title)

(Printed Name and Title)

Date

Date